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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

09/553,413 04/20/00 BRIERE

000826 IM51/0228  
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DATE MAILED:

DAVIS, R

1722

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/553,413

Applicant(s)

BRIERE ET AL.

Examiner

Robert B. Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 22-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/945,089.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## **DETAILED ACTION**

### ***Reissue Applications***

1. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed.

See 37 CFR 1.178.

2. While there is concurrent litigation related to this reissue application, action in this reissue application will NOT be stayed, because a stay of that litigation is in effect for the purpose of awaiting the outcome of these reissue proceedings. Due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED.

**Notice that a one-month period has been set for reply to this office action.**

### ***Information Disclosure Statement***

3. The references to the various court papers and the U.S. Patent application have been considered by the Examiner; however, since these references are not published they have been lined through on the IDS forms 1449.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Turner et al (3,753,641: figures 2-8 and column 4, lines 24-50).

Turner et al teach a mold assembly as shown in figure 2 comprising: two mold shells (21, 22), two mold shell holders (molds 10 and 11), each shell holder having a cavity for supporting the mold shells, and at least one axial positioning assembly (the ledge shown in figure 2 at the portion of the cavity wherein the neck portion of the container is formed on the mold surface).

6. Claims 27, 29, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Schurman (4,151,976: figures 6-10; column 6, line 41 to column 7, line 47).

Schurman teaches a mold shell (38) having a cavity forming surface defining a substantial portion of the container, and a female portion (60) which mates with protruding member (54) on the support of the shell.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schurman taken together with UK Application (2,240,300 A: figures 1-5).

Schurman discloses all claimed features except for the shell defining a cavity having a neck portion, a sidewall portion and a base portion.

The UK application discloses an inner shell having a cavity portion which forms a container having a neck portion, sidewall portion and a base portion.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the shell of Schurman by having a cavity which forms neck, sidewall and base portions of an article as disclosed by the UK application because the change in shape of the molding cavity was within the ordinary skill in the art based on the final desired shape of the molded article. "There is no invention in merely changing the shape or form of an article without changing its function except in a design patent." See *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

10. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al taken together with Schurman.

Turner et al disclose all claimed features except for the positioning assembly being a protrusion or recess which mates with a recess or protrusion in the shell holder.

Schurman discloses a shell (38) having a recess (60) which mates with a protrusion (54) in a holder.

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It would have been obvious at the time of the invention to one of ordinary skill in the art to modify mold assembly of Turner et al to provide a projection on the holder and a recess in a shell as disclosed by Schurman because the use of a projection and mating recess provides for more accurate placement of the shell in the holder than the ledge of Turner et al which provides accurate mold alignment.

11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al taken together with Polka (3,191,225: figure 7).

Turner et al disclose all claimed features except for the shell holder having heat exchange passages and connections for the circulation of heat exchange fluids.

Polka discloses a shell holder (13) having heat exchange passageways (c, d, e) and connections (36) to positively exchange heat with the shell holder.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify mold assembly of Turner et al by having heat exchange passageways and connections in the shell holder as disclosed by Polka for the purpose of providing the mold assembly with adequate means to properly thermally control the temperature of the mold.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al taken together with French reference (2,659,265: figures 1-3).

Turner et al disclose all claimed features except for one of the shells or shell holders defining a cavity at the interface between the shell and shell holder into which a pressurized fluid can be introduced to maintain sealing pressure.

The French reference discloses a cavity defining mold pieces (1 and 2) having a cavity (18) at the interface with a holder to allow introduction of a pressurized fluid via conduit (32) to maintain sealing pressure.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the mold assembly of Turner et al by providing a cavity at the interface of a mold piece and the holder as disclosed by the French reference for the purpose of maintaining sealing pressure of the mold cavity.

***Allowable Subject Matter***

13. Claims 1-21, 32 and 33 are allowed over the prior art of record.

14. The following is a statement of reasons for the indication of allowable subject matter: The original claims 1-14 are allowable for the reasons of record in the original Patent as the prior art fails to teach the combination of a mold shell, shell holder and enveloping structure as outlined in paper number 6 of the Patent. Claim 15 is allowable as none of the prior art of record teaches or suggests a mold assembly for forming thermoplastic containers comprising two mold shells each containing a half-impression of a substantial portion of container to be molded, two mold shell holders each defining a cavity for receiving each respective mold shell such that the shell is in at least partial mutual thermal-conduction contact with its shell holder and at least one quick fixing locking member by which the mold shells are removably secured to the mold shell holders. Turner et al disclose a couple of mold shells supported by mold shell holders, but fails to disclose or suggest a quick-fixing locking member by which the mold shells are removably secured to the mold shell holders. In regards to claim 32, none of the

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prior art teaches or suggests a method of molding including a step of engaging a quick fixing locking mechanism to secure the shell halves to the mold shell holders as discussed above.

**Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Davis whose telephone number is (703) 308-2625. The examiner can normally be reached on Monday through Thursday from 9 AM to 6:30 PM, and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703) 305-4251. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Robert B. Davis  
Primary Examiner  
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2/26/01

February 26, 2001